



IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT IN AND FOR ALACHUA COUNTY, FLORIDA

CHARLES JAMES GRAPSKI AND MICHAEL S. CANNEY,

Plainti	iffs, Case Number:	01-07 CA 0102	2	
v.		క్టర్ల	007	
City of Alachua, Florida, Defendant.		HIR OF	IPR -4	2
	dant. /	OUNTY OUNTY	AH	田色
AMENDED CIVIL CO	MDI AINT EAD DEC	学で氏 JUVY ACATYATY	9: 5	

AMENDED CIVIL COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF UNDER SUNSHINE ACTS

- 1. This is an action for declaratory and injunctive relief pursuant to Chapter 86 Fla. Stat.
- 2. This action is brought for relief against the City of Alachua, Florida pursuant to Article I § 24 Fla. Const., §286.011 Fla. Stat. and §119.07 et. seq. Fla. Stat.
- 3. This Court has jurisdiction pursuant to Article V §5(b) Florida Constitution and the foregoing provisions.

PARTIES

- 4. At all times relevant hereto, plaintiff Charles James Grapski was a citizen and elector of Alachua County and the State of Florida.
- 5. Plaintiff Charles James Grapski is hereinafter referred to as Grapski.
- 6. At all times relevant hereto, plaintiff Michael S. Canney was a citizen and elector of the City of Alachua, Florida, Alachua County and the State of Florida.
- 7. Plaintiff Michael S. Canney is hereinafter referred to as Canney.



- 8. At all times relevant hereto, the City of Alachua, Florida was a municipal corporation established in accordance with Article VIII §2 Florida Constitution or preceding constitutional provisions.
- 9. Defendant City of Alachua, Florida is hereinafter referred to as City.

FACTS

- 10. At all times relevant hereto, David Russ was a citizen and elector of Alachua County and the State of Florida.
- 11. David Russ is hereinafter referred to as Russ.
- 12. At all times material hereto, Jean Calderwood was Mayor of City and presiding official of City Commission of City.
- 13. Jean Calderwood is hereinafter referred to as Mayor.
- 14. At all times material hereto, Clovis Watson was City Manager of City.
- 15. Clovis Watson is hereinafter referred to as Watson.
- 16. At all times relevant hereto, Alan Henderson was an employee and deputy clerk of City.
- 17. Alan Henderson is hereinafter referred to as Henderson.
- 18. The City Commission of the City of Alachua, Florida is the legislative body of City.
- 19. The City Commission of the City of Alachua, Florida is hereinafter referred to as Commission.
- 20. City conducted a municipal election to elect one or more members to Commission on April 11, 2006.
- 21. The Board of Canvassers of City met on April 11, 2006 for the purpose of canvassing the April 11, 2006 election.

- 22. The Board of Canvassers of City is hereinafter referred to as Board.
- 23. Mayor and Watson served as members of Board.
- 24. Minutes of the April 11, 2006 meeting of Board were prepared by a City employee after April 11, 2006.
- 25. The minutes of the April 11, 2006 meeting of Board are hereinafter referred to as Minutes.
- 26. Minutes were never approved by Board in a meeting of Board.
- 27. Minutes were submitted to Commission for approval in the meeting of Commission conducted on May 15, 2006.
- 28. On some date after April 11, 2006 Mayor and Watson signed Minutes.
- 29. Minutes indicated that James Lewis had received more votes than his opponent Lewis Irby.
- 30. A copy of Minutes is attached as Exhibit 1 hereto.
- 31. In April 2006, Eileen McCoy commenced civil action Case Number: 01-06 CA 001590 in this court to contest the April 11, 2006 election.
- 32. The complaint in Case Number: 01-06 CA 001590 alleges *inter alia* that the April 11, 2006 proceedings of Board were not conducted as required by law.
- 33. The complaint in Case Number: 01-06 CA 001590 was amended to add Canney and The Fair Elections Initiative, Inc., of which Grapski is a principal, and others as plaintiffs.
- 34. Mayor, as mayor, Watson, as City Manager, and Henderson as deputy city clerk and supervisor of elections are named defendants in Case Number: 01-06 CA 001590.
- 35. At all times relevant hereto, Henderson was custodian of the records of Board including Minutes.

- 36. The actions of Henderson referred to herein were taken by him acting for City.
- 37. Prior to May 15, 2006, City promulgated a Regular City Commission Meeting Agenda for the May 15, 2006 meeting.
- 38. A copy of this agenda is attached hereto as Exhibit 2.
- 39. This agenda included a portion denominated "CONSENT agenda."
- 40. The consent agenda portion contained this item: "B. Minutes: April 11, 2006 Board of Canvassers Meeting."
- 41. The consent agenda portion also included items A, C, D, E and F.
- 42. On May 12, 2006 Grapski and Canney went to City's City Hall to obtain a copy of Minutes from documents available to the public at City Hall.
- 43. Minutes were not available to the public at City Hall.
- 44. Prior to Commission 's meeting of May 15, 2006, Grapski sought to obtain a copy of Minutes from the City of Alachua, Florida website.
- 45. Minutes were not available to the public on the City of Alachua website prior to Commission's meeting of May 15, 2006.
- 46. Prior to Commission's meeting of May 15, 2006, Grapski sought to obtain a copy of Minutes from the branch public library of the Alachua County Library District located in City.
- 47. Minutes were not available to the public in the branch public library of the Alachua County Library District located in City prior to Commission's meeting of May 15, 2006.
- 48. On May 12, 2006 Grapski and Canney made oral public records requests to City though Henderson to inspect and copy Minutes.
- 49. Henderson denied Grapski's and Canney's requests.

- 50. Henderson orally told Grapski and Canney that Minutes would not be available to the public until after Commission approved them in its meeting of May 15, 2006.
- 51. On the morning of May 15, 2006, prior to Commission's meeting of May 15, 2006, Grapski and Canney made an oral public records request to City though Watson to inspect and copy Minutes.
- 52. Watson told Grapski and Canney that they would have to get Minutes from Henderson.
- 53. On May 15, 2006 Henderson informed Grapski via email that Minutes would be available after Commission approved them in its meeting that night.
- 54. Minutes existed in City's custody at all times material hereto.
- 55. Minutes or one or more copies thereof were then in the custody of Henderson
- 56. Grapski and Canney were invoking rights guaranteed by §119.07 Fla. Stat. and Article I §24(a) Florida Constitution
- 57. Minutes were then a public record subject to inspection pursuant to §119.07 Fla. Stat. and Article I §24(a) Florida Constitution.
- 58. Subsequent to this occasion, Grapski and Canney have repeatedly made requests to City through Henderson to inspect and copy public records, which include:
 - a. On May 26, 2006, Canney made this written email request to City and Henderson for these public records: "Please include also any document or record the city has recording the transfer of the blank ballots used in the April 11 election. I need to know where they came from (I presume they were delivered from the County Supervisor of Elections), when the ballots were received, how many ballots there were, and who signed for them. I presume the City of Alachua has documentation of this, and I'm requesting all documents related to the ballots used in the election, from the time the city received them until

today."

- i. City and Henderson did not provide records in response to this request.
- b. On June 1, 2006, Canney made this written email request to City, Watson and Henderson for these public records: "Provide me with a copy of all purchase orders, billing statements and payment receipts related to the city's ordering and purchase of paper ballots and ballot materials used in city elections, whether used in voting machines or absentee voting. I need a copy of any document that contains the total number of ballots purchased from the printers, with a description that includes the sequential numbers printed on the ballot stubs."
 - i. City, Watson and Henderson did not provide records in response to this request.
- c. On June 8, 2006, Canney made this written email request to City, Watson and Henderson for these public records: "All invoices or billing statements for newspaper advertising by the city related to Michael Canney, the Alachua County Green Party, and the absentee ballot log."
 - i. City, Watson and Henderson did not provide records in response to this request.
- d. On March 8, 2007, Canney made this written email request to City and Henderson for these public records: "Any and all qualifying documents submitted to the city by candidates for city commission, including incumbents and challengers, from year 2000 until today."
 - i. City and Henderson did not provide records in response to this request.
- 59. City and Henderson have repeatedly denied some of Grapski's and Canney's subsequent requests to inspect and copy public *records* pertaining to the April 11, 2006 election and repeatedly refused to provide reasons for the denials in writing.

- 60. City's denials of Grapski's and Canney's requests violated §119.07 Fla. Stat. and Article I §24(a) Florida Constitution.
- 61. Commission customarily approves the agenda for each public meeting it conducts as one of its first actions in a meeting.
- 62. Under Commission's customary practice, its approval of the agenda for the meeting constitutes substantive approval of the items presented on the consent agenda portion of the agenda.
- 63. Commission customarily does not permit members of Commission or members of the public to comment upon or discuss items on a consent agenda in a public meeting.
- 64. Prior to approving the agenda Commission customarily removes items from the consent agenda and places them on a regular agenda when requested to do so by a member of Commission.
- 65. Placing an item on the regular agenda permits members of the public and members of Commission to comment on or discuss the item in a public meeting before Commission votes on the item.
- 66. Prior to approving the agenda Commission customarily does not remove items from the consent agenda and place them on a regular agenda when requested to do so by a member of the public if no member of Commission makes such a request.
- 67. Not removing an item from the consent agenda upon the request of a citizen denies the public an opportunity to address Commission about the item in a public meeting prior to its approval by Commission and denies the public an opportunity to observe the process and hear public statements by members of Commission in a public meeting prior to its approval by Commission.
- 68. Prior to the meeting of May 15, 2006, Grapski made a written request to City through Mayor to remove Minutes and items A, C, D, E, and F from the consent agenda of the meeting of May 15, 2006.
- 69. Prior to the meeting of May 15, 2006, Russ made a written request to City

- through Mayor to remove items C through F from the consent agenda of the meeting of May 15, 2006.
- 70. City and Mayor refused the foregoing requests to remove Minutes and items A, C, D, E, and F from the consent agenda of the May 15, 2006 meeting and retained Minutes and items A, C, D, E and F on the consent agenda.
- 71. In Commission's meeting of May 15, 2006 and prior to Commission's approval of the agenda, Grapski and Russ sought to address Mayor and the Commission with requests to remove Minutes and items A, C, D, E, and F from the consent agenda.
- 72. Mayor and Commission treated Grapski's and Russ's attempts to address them as interruptions.
- 73. Mayor and Commission would not permit Grapski and Russ to present their requests to remove Minutes and items A, C, D, E and F from the consent agenda.
- 74. Mayor and Commission denied Grapski's and Russ's attempts to remove Minutes and items A, C, D, E, and F from the consent agenda.
- 75. Mayor and Commission did not permit members of the public to observe Commission discuss and vote upon Minutes and items A, C, D, E, and F in a public meeting.
- 76. Mayor and Commission did not permit members of the public or Commission to discuss or comment upon Minutes and items A, C, D, E, and F in a public meeting before Commission took a vote to approve them.
- 77. Mayor and Commission approved the consent agenda of the meeting of May 15, 2006 including Minutes and items A, C, D, E and F without removing Minutes and items A, C, D, E and F from the consent agenda.
- 78. Mayor and City Commission approved the consent agenda of the May 15, 2006 meeting including Minutes and items A, C, D, E and F without permitting members of the public or members of Commission to comment upon or discuss them in a public meeting.

- 79. A copies of pages 1 of 8 and 8 of 8 of the minutes of Commission's meeting of May 15, 2006 are attached hereto as Exhibit 3.
- 80. City's action violated the rights of Plaintiffs and other citizens guaranteed by §286.011 Fla. Stat. and Article I §24(b) Florida Constitution to observe and to be heard about important public decisions taken in a public meeting.
- 81. Commission routinely approves matters of great public importance and concern as items on consent agendas without permitting members of the public or members Commission to comment upon or discuss them in a public meeting before taking a vote on approving them.
- 82. Commission approved the minutes of its meeting of May 15, 2006 as a consent agenda item in Commission's meeting of August 3, 2006.
- 83. In its meeting of September 11, 2006 Commission voted to continue its practice of not removing items from the consent agenda upon the request of a citizen.
- 84. Commission continues to approve matters of great public importance and concern as items on consent agendas without permitting members of the commission or members of the public to comment upon or discuss them in a public meeting prior to taking a vote upon their approval.
- 85. As used herein, a matter of great public importance is any matter coming before Commission for decision that a member of the public requests be taken in a regular vote and not as a consent agenda item.

COUNT I

86. Grapski and Canny replead paragraphs 1-60 herein and sue City for violations of §119.07 et. seq. Fla. Stat. and Article I §24(a) Florida Constitution and demand judgment against City in the nature of a order declaring that City has denied their rights guaranteed by §119.07 et. seq. Fla. Stat. and Article I §24(a) Florida Constitution by refusing to permit them to inspect and copy Minutes and other public records, enjoining City to grant their valid requests to inspect and copy City's public records, enjoining City to provide written reasons for its denials when requested to provide them, granting Plaintiffs attorneys fees as directed by law, granting

Plaintiffs costs for this litigation, and providing other appropriate relief authorized by law.

COUNT II

87. Grapski repleads paragraphs 1-5, 8-13, 18-41, and 61-85 and sues City for violations of §286.011 Fla. Stat. and Article I §24(b) Florida Constitution and demands judgment against City in the nature of an order rendering City's approval of Minutes null and void and of no legal effect, rendering City's approval of items A, C, D, E, and F null and void and of no legal effect, granting an injunction against City not to place matters of substance and public importance on consent agendas, granting an injunction against City not to refuse to remove items of substance and public importance from consent agendas when requested by citizens to do so, granting Grapski attorneys fees as directed by law, granting Grapski costs for this litigation, and providing other appropriate relief authorized by law.

CERTIFICATE OF SERVICE

I certify that a copy of this document was mailed by US mail or hand delivered to Robert A. Rush, Esq., Attorney for Defendants, 726 M.E. First Street, Gainesville,

Fl. 32601, on the 2nd day of April 2007.

oseph W. Little

Florida Bar No. 196749

Attorney for Plaintiffs

3731 N.W. 13th Pl

Gainesville, Florida 2605

352-273-0660

O:/.../Projects/AlaSS/AmComp704.001

EXHIBIT 1

BOARD'S MINUTES APRIL 11, 2006

City of Alachua



BOARD OF CANVASSERS MEETING

Agenda

Date: April 11, 2006

The Alachua Board of Canvassers met on Tuesday, April 11, 2006, at 8:00 p.m. in the George F. Duke Auditorium, City Hall, 15001 NW 140th Street, Alachua, Florida.

Canvassing Board Present: Mayor Jean Calderwood, City Manager Clovis Watson, Jr., and Rosanne Morse.

Staff Present: Deputy City Clerk Alan Henderson, Executive Assistant Tara Henderson, and Staff Assistant Diane Morgan.

CALL TO ORDER

By Mayor Jean Calderwood

APPROVAL OF THE AGENDA

Passed by unanimous consent.

I. AGENDA ITEMS

A. ANNOUNCE PRECINCT RESULTS.

Deputy City Clerk Alan Henderson reads the precinct results: Turkey Creek, 243 for Lewis Irby and 290 for James Lewis; Recreation Center, 259 for Lewis Irby and 195 for James Lewis; Fire Station, 91 for Lewis Irby and 99 for James Lewis.

B. MANUAL COUNT OF ABSENTEE BALLOTS.

Mr. Henderson unlocks the Absentee Ballot Box and places them on the tables for review. The Canvassing Board is invited to view the absentee ballots and to note any discrepancies. The candidates are invited to view the ballots; Mr. Lewis Irby accepts the invitation and reviews the ballots while Mr. James Lewis declines. The public is then invited to view the absentee ballots when they have finished. The Supervisor of Elections, Pam Carpenter, has certified all absentee ballots except for 9 of them. Mr. Henderson is able to verify 7 of them, leaving 2 absentee ballots rejected and unopened. Executive Assistant Tara Henderson opens

Notice given pursuant to Section 286.0105, Florida Statutes. In order to appeal any decision made at this meeting you will need a verbatim record of the proceedings. It will be your responsibility to ensure such a record is made.

Date: April 11, 2006

the absentee ballot envelopes and hands them to Staff Assistant Diane Morgan who reads the ballot aloud. Anyone desiring to come forward to watch this process is invited to pull up a chair to observe. The absentee ballot count results are Lewis Irby, 41 votes, and James Lewis, 68 votes. Ms. Morgan again reads the absentee ballots aloud and again the totals are verified.

C. MANUAL COUNT OF PROVISIONAL AND UNSCANNED BALLOTS.

No provisional or unscanned ballots reported.

D. DECLARATION OF ELECTION FOR CITY OF ALACHUA CITY COMMISSION SEAT 5

Mayor Calderwood announces the winner of Seat 5 with 652 votes to be James Lewis. Commissioner Orien Hills is re-elected by default.

ADJOURN

Mayor Calderwood adjourns the canvassing meeting.

Attest:

Clovis Watson, Jr. MPA

City Manager

Jean Calderwood, Mayor

EXHIBIT 2

AGENDA, COMMISSION MEETING MAY 15, 2006



Home

City Commission
May 15 Meeting
City Manager
Public Records

Utility Billing

Purchasing

Finance

Human Resources

Planning & Community Development

Public Services

Recreation

Police Department

Site Map

May 15 Meeting

City of Alachua

1905-2005 Celebrating Our Second Century

REGULAR CITY COMMISSION MEETII Agenda May 15, 2006

Mayor Jean
Calderwood
Manager Clovis Watson, Jr. MPA
Vice-Mayor Gib
Coerper
City Attorney Marian Rush
Commissioner James Lewis
Commissioner Orien Hills
Commissioner Bonnie Burgess

City

The City Commission will conduct a Regular City Commission Meeting at 7 p.m.

MEETING DAY & DATE: Monday, May 15, 2006

MEETING LOCATION: George F. Duke Auditorium, City Hall, 15001 NW 140th Street, Alachua, Florida

city commission meeting

INVOCATION
PLEDGE TO THE FLAG



APPROVAL OF THE AGENDA

Notice given pursuant to Section 286.0105, Florida Statutes. In order to appeal a decision made at this meeting, you will need a verbatim record of the proceeding. It will be your responsibility to ensure such a record is made.

I. SPECIAL PRESENTATIONS

A. Wild Gardens Zoological Park - Matthew Waterhouse, President CEO

- II. COMMENTS FROM CITIZENS ON SUBJECT OF CHOIC (Please Limit to 3 Minutes. Any citizen who is unable to speak at the coff the meeting may do so at this time but will not have an opportunity speak again at the end of the meeting.)
- III. COMMITTEE REPORTS/ COMMITTEE APPOINTMENTS
 CITY ANNOUNCEMENTS
 - A. PUBLIC AND ELECTED OFFICIALS WORKSHOPS ON SCHOOL CONCURRE
- IV. PUBLIC HEARINGS AND ORDINANCES
 (Presentations, other than the applicant, please limit to 3 Minutes.)
 - A. First Reading First Public Hearing Ordinance 06 22: Amending the City of Alachua Land Development Regulations (LDR), Article 6 Development Standards; Section 6.9.4 Flood Pr Standards (This is a Legislative Hearing)
 - i. First Reading, Ordinance 06 22; Considerati of Approval of the Above Stated Ordinance
 ii. Public Hearing to Consider Adoption of the Above-Reference Ordinance

V. AGENDA ITEMS

- A. APPOINTMENTS (2) PLANNING & ZONING BOARD
- B. RESOLUTION 06 27; COMMUNITY SCHOOL APPROACH TO K-12 EDUCAT
- VI. COMMENTS FROM CITIZENS ON SUBJECT OF CHOR (Please limit to three minutes. Any citizen who did not speak during the Citizen Comments period at the beginning of the meeting may do so this time.)
- VII. COMMENTS FROM CITY MANAGER
- VIII. COMMISSION COMMENTS/DISCUSSION ADJOURN

CONSENT agenda

consent agenda items

- A. Minutes: April 3, 2006 Regular City Commission Meetir
- B. Minutes: April 11, 2006 Board of Canvassers Meeting
- C. Resolution No. R-06-25: A Resolution Amending the Planning and Zoning Schedule of Fees
- D. FINAL PLAT: A REQUEST BY CLIPPER DEVELOPMENT AND LEGACY PROI DEVELOPMENT, AGENT, FOR WACO OF ALABAMA, INC., OWNER, FOR APPROVAL OF THE SAVANNAH STATION PLANNED UNIT DEVELOPMENT (PUD) PHASE I FINAL PLAT. THE SAVANNAH STATION PUD IS A MIXEL SUBDIVISION ON A PORTION OF 80.3 ACRES, LOCATED WEST OF I-75 AT 235 AND NORTHWEST 157TH STREET, ALACHUA, FLORIDA. FLUM: MODERATE DENSITY RESIDENTIAL; ZONING: PUD. PORTION OF TAX PARCELS #03980-002-000 AND 03905-002-000
- E. COUNTY TOURIST DEVELOPMENT TAX CAPITAL PROJECT RESOLUTION SUPPORT
- F. UNITED STATES DEPARTMENT AGRICULTURE (USDA) RURAL HOUSIN SERVICE, SECTION 533 HOUSING PRESERVATION GRANT PROGRAM

BACKUP MATERIAL BELOW:

School Concurrency

LDR text amendment

P&Z Board appointments

Community schools

P&Z fees

Savannah Station

Zoo project

USDA grant application

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Development | Public Services | Recreation | Police Department | Site Map



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EXHIBIT 3

PAGES 1 AND 8 MINUTES, MAY 15, 2006

City of Alachua



REGULAR CITY COMMISSION MEETING Agenda May 15, 2006

Mayor Jean Calderwood Vice-Mayor Gib Coerper Commissioner James Lewis Commissioner Orien Hills Commissioner Bonnie Burgess

City Manager Clovis Watson, Jr. MPA City Attorney Marian Rush

The City Commission held a Regular City Commission Meeting on May 15, 2006, at 7:00 p.m. in the George F. Duke Auditorium, City Hall, 15001 NW 140th Street, Alachua, Florida.

Elected Officials Present: Mayor Jean Calderwood, Vice-Mayor Gib Coerper, Commissioner Orien Hills, Commissioner Bonnie Burgess, and Commissioner James Lewis.

Staff Present: City Manager Clovis Watson, Jr., City Attorney Marian Rush, Assistant City Manager Danielle Judd, Deputy City Clerk Alan Henderson, and Executive Assistant Tara Henderson.

Citizens Present: Matt Waterhouse, Connie Canney, Carol Canney, Jo Parrott, Robert Hartley, Cheryl Hartley, Jeff Brooker, Thelma Hammon, Theresa Kenyon, Debbie Hardacre, Gary Hardacre, Dorothy Watson, Sr., Bernice Garrison, Priscilla Garrison, Martha Collins, John Richardson, Kevin McCuller, Rodger Mallard, David Russ, Michael Canney, Bryan Boukari, Louis Washington, and Jane Hendricks.

CALL TO ORDER

By Mayor Jean Calderwood.

Assistant City Manager introduces the following new staff members in the Planning and Community Development Department: John Richardson, Planner; Rebeka Magoolaghan, Planning Assistant; and Kelly Huard, Planner.

INVOCATION

Led by Commissioner Orien Hills

CONSENT AGENDA

CONSENT AGENDA ITEMS

- A. MINUTES: APRIL 3, 2006 REGULAR CITY COMMISSION MEETING
- B. MINUTES: APRIL 11, 2006 BOARD OF CANVASSERS MEETING
- C. RESOLUTION NO. R-06-25: A RESOLUTION AMENDING THE PLANNING AND ZONING SCHEDULE OF FEES
- D. FINAL PLAT: A REQUEST BY CLIPPER DEVELOPMENT AND LEGACY PROPERTY DEVELOPMENT, AGENT, FOR WACO OF ALABAMA, INC., OWNER, FOR APPROVAL OF THE SAVANNAH STATION PLANNED UNIT DEVELOPMENT (PUD) PHASE I FINAL PLAT. THE SAVANNAH STATION PUD IS A MIXED-USE SUBDIVISION ON A PORTION OF 80.3 ACRES, LOCATED WEST OF I-75 AT CR 235 AND NORTHWEST 157th STREET, ALACHUA, FLORIDA. FLUM: Moderate Density Residential; Zoning: PUD. Portion of Tax parcels #03980-002-000 and 03905-002-000
- E. COUNTY TOURIST DEVELOPMENT TAX CAPITAL PROJECT RESOLUTION OF SUPPORT
- F. UNITED STATES DEPARTMENT AGRICULTURE (USDA) RURAL HOUSING SERVICE, SECTION 533 HOUSING PRESERVATION GRANT PROGRAM

Clovis Watson, Jr., City Manager

Jean B. Calderwood, Mayor

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